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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JAN 31 2013

AT 8:30 WILLIAM T. WALSH M  
CLERK

UNITED STATES OF AMERICA : Criminal No. 12-811 (FLW)  
v. :  
: 18 U.S.C. §§ 287, 1341, 1343 and 2  
: 26 U.S.C. § 7212(a)  
: DAVID MOLESKI : **SUPERSEDING INDICTMENT**

The Grand Jury in and for the District of New Jersey, sitting at Trenton, charges:

**COUNTS 1-14**

18 U.S.C. §§ 1341 and 2  
Mail Fraud

### **Background**

At times relevant to this Superseding Indictment:

1. Defendant DAVID MOLESKI was a licensed chiropractor and a resident of Neptune, Monmouth County, New Jersey.
  2. The Internal Revenue Service (“IRS”) was and is an agency of the United States Department of the Treasury (“Treasury”), responsible for administering and enforcing the tax laws of the United States, and collecting the taxes that are due and owing to the Treasury by its citizens and businesses.

## The Scheme To Defraud

3. From on or about February 15, 2008, through on or about June 10, 2009, in the District of New Jersey and elsewhere, Defendant DAVID MOLESKI knowingly and with the intent to defraud, devised a scheme and artifice to defraud the United States, the State of New Jersey, and private creditors; and in order to obtain money and property from the United States, the State of New Jersey, and private creditors, by means of materially false and fraudulent

pretenses, representations, and promises, placed and caused to be placed in a post office and authorized depository for mail matter, and caused to be sent and delivered by the United States Postal Service: (1) certain false and fraudulent tax returns in an effort to obtain refunds from the IRS; and (2) certain fake financial instruments in purported payment of tax debts and credit card and other debts.

4. It was part of the scheme to defraud that Defendant DAVID MOLESKI mailed and caused to be mailed to the Secretary of the Treasury several fake financial instruments that purported to open accounts at the Treasury.

5. It was further part of the scheme to defraud that Defendant DAVID MOLESKI attempted to use the accounts he purported to open at the Treasury to satisfy tax debts he owed to the United States and the State of New Jersey, and to extinguish credit card debt he owed to private creditors.

6. It was further part of the scheme to defraud that Defendant DAVID MOLESKI, in an attempt to fraudulently satisfy tax debts he owed to the United States and the State of New Jersey, mailed and caused to be mailed to the Secretary of the Treasury and to the IRS, correspondence, wherein Defendant DAVID MOLESKI demanded that tax judgments issued against him by the United States and the State of New Jersey be “settle[d] and close[d]” against non-existent accounts he purported to hold at the Treasury.

7. It was further part of the scheme to defraud that Defendant DAVID MOLESKI, in an attempt to fraudulently extinguish credit card debts he owed to private creditors, mailed and caused to be mailed to the private creditors fake financial instruments, entitled “secured

promissory note[s]" that purported to draw against non-existent accounts he purported to hold at the Treasury.

8. It was further part of the scheme to defraud that Defendant DAVID MOLESKI mailed and caused to be mailed to the Secretary of the Treasury copies of the "secured promissory notes" that he sent to the private creditors, and instructed the Secretary of the Treasury to satisfy the credit card debts Defendant DAVID MOLESKI held with the private creditors from non-existent accounts he purported to hold at the Treasury.

9. It was further part of the scheme to defraud that Defendant DAVID MOLESKI, after receiving notice that the private creditors failed to credit his accounts, mailed and caused to be mailed to the private creditors letters, wherein Defendant DAVID MOLESKI falsely and fraudulently represented that he paid his credit card balances in full based on the fake financial instruments.

10. It was further part of the scheme to defraud that Defendant DAVID MOLESKI, after receiving notice from the private creditors that they refused to honor the fake financial instruments he sent to them, mailed and caused to be mailed to them letters designed to obstruct the private creditors from collecting the debts Defendant DAVID MOLESKI owed to them.

11. It was further part of the scheme to defraud that Defendant DAVID MOLESKI mailed and caused to be mailed to a credit reporting agency several letters, wherein Defendant DAVID MOLESKI falsely and fraudulently claimed that the debts he held with the private creditors were "PAID IN FULL."

12. It was further part of the scheme to defraud that Defendant DAVID MOLESKI mailed and caused to be mailed to collection agencies acting on behalf of one of the private

creditors letters designed to obstruct the collection agencies from collecting the debts Defendant DAVID MOLESKI owed to them.

13. It was further part of the scheme to defraud that Defendant DAVID MOLESKI sent and caused to be sent to the private creditors false and fraudulent IRS forms, to wit, Forms 1099-OID for tax years 2006 and 2007, wherein Defendant DAVID MOLESKI falsely and fraudulently claimed that he received original issue discount from the private creditors.

14. It was further part of the scheme to defraud that Defendant DAVID MOLESKI mailed and caused to be mailed to the IRS Forms 1040, U.S. Individual Income Tax Returns (“IRS Forms 1040”), for tax years 2006 and 2007, wherein Defendant DAVID MOLESKI falsely and fraudulently claimed refunds based, in part, on the figures falsely reported on the 2006 and 2007 Forms 1099-OID.

**Statutory Allegations**

On or about the dates listed below, in the District of New Jersey and elsewhere, for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent, pretenses, representations, and promises, Defendant

DAVID MOLESKI

did knowingly and intentionally place and cause to be placed in a post office and authorized depository for mail matter, and cause to be sent and delivered by the United States Postal Service, certain mail matter, as set forth in the table below, each instance being a separate Count of this Indictment:

<b>Count</b>	<b>On or About</b>	<b>Mailed From</b>	<b>Addressed To</b>	<b>Mailing</b>	<b>False Representations</b>
1	2/15/2008	Avon by the Sea, NJ	Department of the Treasury, Washington, DC	Letter entitled "Private Offset Discharging and Indemnity Bond" and associated documents	Falsely purporting to open an account at the Treasury Department
2	5/29/2008	Belmar, NJ	Department of the Treasury, Washington, DC	Letter entitled "Non-Negotiable Charge Back" and associated documents	Falsely purporting to open an account at the Treasury Department
3	6/23/2008	New Jersey	Department of the Treasury, Washington, DC	Copy of Secured Promissory Note in the amount of \$80,000 sent to Bank of America and associated documents	Falsely purporting to draw on non-existent account at the Treasury Department
4	6/24/2008	New Jersey	Department of the Treasury, Washington, DC	Copy of Secured Promissory Note in the amount of \$100,000 sent to Chase and associated documents	Falsely purporting to draw on non-existent account at the Treasury Department
5	6/27/2008	Belmar, NJ	Advanta Bank, Spring House, PA	Secured Promissory Note in the amount of \$15,000 and associated documents	Falsely purporting to pay credit card balances

6	7/3/2008	Belmar, NJ	Washington Mutual, Seattle, WA	Secured Promissory Note in the amount of \$30,000 and associated documents	Falsely purporting to pay credit card balances
7	7/3/2008	New Jersey	Department of the Treasury, Washington, DC	Copy of Secured Promissory Note in the amount of \$30,000 sent to Washington Mutual and associated documents	Falsely purporting to draw on non- existent account at the Treasury Department
8	9/15/2008	Kilmer, NJ	Experian, Costa Mesa, CA	Letter concerning accounts with Bank of America, Washington Mutual, First Equity, Chase, and Advanta	Falsely claiming that his accounts with Bank of America, Washington Mutual, First Equity, Chase, and Advanta have been “PAID IN FULL”
9	9/29/2008	Neptune City, NJ	Treasury Inspector General for Tax Administration, Lanham, MD	Copy of Secured Promissory Note in the amount of \$100,000 sent to New Jersey Treasurer and associated documents	Falsely purporting to draw on non- existent account at the Treasury Department
10	10/29/2008	New Jersey	Department of the Treasury, Washington, DC	Copy of Secured Promissory Note in the amount of \$500,000 sent to American Home Mortgage and associated documents	Falsely purporting to draw on non- existent account at the Treasury Department

11	3/5/2009	New Jersey	Department of the Treasury, Washington, DC	Copy of Secured Promissory Note in the amount of \$360,000 sent to Saxon Mortgage and associated documents	Falsely purporting to draw on non-existent account at the Treasury Department
12	5/4/2009	Belmar, NJ	Chase Card Services, Wilmington, DE	Secured Promissory Note in the amount of \$100,000 and associated documents	Falsely purporting to pay credit card balances
13	5/20/2009	New Jersey	IRS	IRS Form 1040, U.S. Individual Income Tax Return for 2006	Claiming a fraudulent refund based, in part, on false and fraudulent Forms 1099-OID
14	6/10/2009	New Jersey	IRS	IRS Form 1040, U.S. Individual Income Tax Return for 2007	Claiming a fraudulent refund based, in part, on false and fraudulent Forms 1099-OID

All in violation of Title 18, United States Code, Sections 1341 and 2.

**COUNT 15**  
18 U.S.C. § 1343 and 2  
Wire Fraud

15. The allegations contained in paragraphs 1 and 2 are realleged and incorporated by reference into Count 15 as if set out in full herein.

**The Scheme To Defraud**

16. From in or around the beginning of 2009 through on or about June 23, 2009, in the District of New Jersey and elsewhere, Defendant DAVID MOLESKI did knowingly and with the intent to defraud devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire communication in interstate commerce a certain false and fraudulent tax return in an effort to obtain a refund from the IRS.

17. It was part of the scheme to defraud that Defendant DAVID MOLESKI sent and caused to be sent to the private creditors false and fraudulent IRS Forms, to wit, Forms 1099-OID for tax year 2008, wherein Defendant DAVID MOLESKI falsely and fraudulently claimed that he received original issue discount from the private creditors.

18. It was further part of the scheme to defraud that Defendant DAVID MOLESKI electronically filed with the IRS an IRS Form 1040, for tax year 2008, wherein Defendant DAVID MOLESKI falsely and fraudulently claimed a refund based, in part, on the figures falsely reported on the 2008 Forms 1099-OID.

**Statutory Allegation**

On or about June 23, 2009, in the District of New Jersey and elsewhere, for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud, and

for obtaining money and property by means of materially false and fraudulent, pretenses, representations, and promises, Defendant

DAVID MOLESKI

did knowingly and intentionally transmit and cause to be transmitted by means of wire communication in interstate commerce certain writings, signs, signals and sounds, to wit, Defendant DAVID MOLESKI electronically filed with the IRS a false and fraudulent IRS Form 1040 for tax year 2008 claiming a refund to which he was not entitled.

All in violation of Title 18, United States Code, Sections 1343 and 2.

**COUNT 16**

26 U.S.C. § 7212(a)

Corruptly Endeavoring to Impair and Impede the  
Due Administration of the Internal Revenue Code

19. The allegations contained in paragraphs 1, 2, 6, 14, and 18 are realleged and incorporated by reference into Count 16 as if set out in full herein.

20. Defendant DAVID MOLESKI failed to file timely federal income tax returns for tax years 1999 through 2005.

**The Corrupt Endeavor**

21. From in or about August 15, 2005, through at least on or about June 23, 2009, in the District of New Jersey and elsewhere, Defendant

DAVID MOLESKI

did corruptly obstruct and impede, and endeavored to obstruct and impede, the due administration of the internal revenue laws of the United States by, among other things: (1) instructing a private creditor not to comply with a Notice of Levy issued by the IRS in an attempt

to satisfy an outstanding tax debt for Defendant DAVID MOLESKI's 2001 income taxes; (2) filing and causing to be filed fraudulent IRS Forms 1040 for 2006 through 2008, wherein Defendant DAVID MOLESKI falsely claimed refunds to which he knew he was not entitled; (3) submitting to the IRS obstructive correspondence wherein Defendant DAVID MOLESKI refused to pay taxes due; and (4) sending fraudulent correspondence to the IRS, wherein Defendant DAVID MOLESKI purported to extinguish his tax debts against a non-existent account he purported to hold at the Treasury.

22. Defendant DAVID MOLESKI's corrupt endeavors to obstruct and impede the due administration of the internal revenue laws are contained in, but not limited to, paragraphs 23 through 37 that follow.

23. On or about August 15, 2005, Defendant DAVID MOLESKI submitted a letter and exhibits to Capital One, instructing Capital One not to comply with a Notice of Levy issued to it by the IRS in satisfaction of Defendant DAVID MOLESKI's 2001 income taxes. Defendant DAVID MOLESKI supplied obstructive correspondence to Capital One and instructed Capital One to send the obstructive correspondence to the IRS in order to verify the validity of the levy.

24. On or about August 31, 2006, Defendant DAVID MOLESKI mailed and caused to be mailed to the IRS correspondence in response to an IRS Revenue Agent's August 3, 2006 letter notifying him that the IRS has not received his tax returns for tax years 1999 through 2005. In his correspondence, Defendant DAVID MOLESKI stated that by requesting that he file a tax return, the IRS was "participating in the commission of felony frauds."

25. On or about May 29, 2007, Defendant DAVID MOLESKI mailed and caused to be mailed to the IRS correspondence in response to an IRS notice sent to him on April 16, 2007,

notifying him that the IRS had not received his tax return for tax year 2005. In his correspondence, Defendant DAVID MOLESKI accused the IRS of “maliciously” depriving him of property and stated that he “has no obligation to file a bootleg” tax return.

26. On or about August 27, 2007, Defendant DAVID MOLESKI mailed and caused to be mailed to the IRS correspondence in response to an IRS Group Manager’s August 1, 2007 letter notifying him of unpaid tax deficiencies for tax years 1999 through 2000 and 2002 through 2005. In his correspondence, Defendant DAVID MOLESKI stated that he had “never been established” as a taxpayer and that attempts to collect taxes due were “outside the scope” of the law.

27. On or about April 8, 2008, Defendant DAVID MOLESKI mailed and caused to be mailed to the IRS correspondence in response to an IRS Territory Manager’s February 1, 2008 issuance of a Notice of Deficiency for previously requested unpaid income taxes for 1999 through 2000 and 2002 through 2005. In his correspondence, Defendant DAVID MOLESKI returned the Notice of Deficiency, defacing the document by writing, in part, “Accepted for Value, Exempt From Levy,” and demanding that a tax judgment issued against him by the IRS be “settle[d] and close[d]” against a non-existent account he purported to hold at the Treasury.

28. On or about January 9, 2009, Defendant DAVID MOLESKI mailed and caused to be mailed to the IRS correspondence in response to an IRS Revenue Officer’s January 2, 2009 issuance of a Final Notice of Intent to Levy for previously requested unpaid income taxes for 1999 through 2000 and 2002 through 2005. In his correspondence, Defendant DAVID MOLESKI returned the Final Notice of Intent to Levy, defacing the document by writing, in part, “Accepted for Value, Exempt From Levy,” and demanding that a tax judgment issued

against him by the IRS be "settle[d] and close[d]" against a non-existent account he purported to hold at the Treasury.

29. On or about January 15, 2009, Defendant DAVID MOLESKI mailed and caused to be mailed to an IRS Revenue Officer an IRS Form 56, Notice Concerning Fiduciary Relationship, falsely claiming that said Revenue Officer was Defendant DAVID MOLESKI's fiduciary.

30. On or about May 26, 2009, Defendant DAVID MOLESKI signed, mailed or caused to be mailed to the IRS an IRS Form 1040 for calendar year 2006. On this return, Defendant DAVID MOLESKI falsely reported receiving taxable interest of \$656,095; falsely claimed federal income tax withholding in the amount of \$623,289; and fraudulently claimed a refund in the amount of \$440,752.

31. On or before June 3, 2009, Defendant DAVID MOLESKI sent or caused to be sent to Chase a fraudulent Form 1099-OID for tax year 2006, wherein Defendant DAVID MOLESKI claimed that he received an original issue discount of approximately \$25,000 from Chase. Defendant DAVID MOLESKI included the false figure, in part, as a basis for his fraudulent 2006 IRS Form 1040.

32. On or about June 15, 2009, Defendant DAVID MOLESKI signed, mailed or caused to be mailed to the IRS an IRS Form 1040 for calendar year 2007. On this return, Defendant DAVID MOLESKI falsely reported receiving taxable interest of \$1,225,315; falsely claimed federal income tax withholding in the amount of \$1,156,338; and fraudulently claimed a refund in the amount of \$764,248.

33. On or before June 17, 2009, Defendant DAVID MOLESKI sent or caused to be sent to Chase two fraudulent Forms 1099-OID for tax year 2007, wherein Defendant DAVID MOLESKI claimed that he received total original issue discount of approximately \$50,000 from Chase. Defendant DAVID MOLESKI included the figure, in part, as a basis for his fraudulent 2007 IRS Form 1040.

34. On or before June 19, 2009, Defendant DAVID MOLESKI sent or caused to be sent to Chase a fraudulent Form 1099-OID for tax year 2007, wherein Defendant DAVID MOLESKI claimed that he received an original issue discount of approximately \$10,250 from Washington Mutual. Defendant DAVID MOLESKI included the false figure, in part, as a basis for his fraudulent 2007 IRS Form 1040.

35. On or about June 23, 2009, Defendant DAVID MOLESKI electronically signed, submitted or caused to be submitted to the IRS an IRS Form 1040 for calendar year 2008. On this return, Defendant DAVID MOLESKI falsely reported receiving taxable interest of \$162,623; falsely claimed federal income tax withholding in the amount of \$154,491; and fraudulently claimed a refund in the amount of \$118,078.

36. On or before June 28, 2009, Defendant DAVID MOLESKI sent or caused to be sent to Chase two fraudulent Forms 1099-OID for tax year 2006, wherein Defendant DAVID MOLESKI claimed that he received total original issue discount of approximately \$15,911 from Washington Mutual. Defendant DAVID MOLESKI included the false figure, in part, as a basis for his fraudulent 2006 IRS Form 1040.

37. In and around 2009, Defendant DAVID MOLESKI sent or caused to be sent to Chase two fraudulent Forms 1099-OID for tax year 2008, wherein Defendant DAVID

MOLESKI claimed that he received an original issue discount of approximately \$50,000 from Chase. Defendant DAVID MOLESKI included the false figure, in part, as a basis for his fraudulent 2008 IRS Form 1040.

All in violation of Title 26, United States Code, Section 7212(a).

**COUNTS 17 - 19**  
18 U.S.C. §§ 287 and 2  
False, Fictitious, and Fraudulent Claims

38. The allegations contained in paragraphs 1, 2, 13, and 17 are realleged and incorporated by reference into Counts 17 through 19 as if set out in full herein.

**Statutory Allegations**

On or about the dates set forth below, in the District of New Jersey and elsewhere, Defendant

DAVID MOLESKI

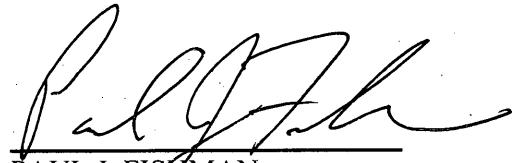
a resident of Neptune, Monmouth County, New Jersey, made and presented, and caused to be made and presented, to the United States claims for payment of fraudulent tax refunds in the amounts listed below, with knowledge that such claims were false, fictitious, and fraudulent.

The Defendant made the false claims by submitting U.S. Individual Income Tax Returns, Forms 1040, for the calendar years referenced below, which returns were presented and caused to be presented to the United States Treasury Department through the Internal Revenue Service and which were based, in part, on fictitious Forms 1099-OID.

<b>Count</b>	<b>Refund Year</b>	<b>Approximate Date of Filing</b>	<b>Approximate Amount Claimed</b>
17	2006	May 26, 2009	\$440,752
18	2007	June 15, 2009	\$764,248
19	2008	June 23, 2009	\$118,078

All in violation of Title 18, United States Code, Sections 287 and 2.

A TRUE BILL



PAUL J. FISHMAN  
UNITED STATES ATTORNEY

CASE NUMBER: 2008R01158

United States District Court  
District of New Jersey

UNITED STATES OF AMERICA

v.

DAVID MOLESKI

**SUPERSEDING INDICTMENT FOR**  
18 U.S.C. §§§287,1341, 1343 and 2  
26 U.S.C. § 7212(a)

A True Bill,

Foreperson

PAUL FISHMAN

U.S. ATTORNEY  
NEWARK, NEW JERSEY

TINO LISELLA  
SPECIAL ASSISTANT U.S. ATTORNEY  
609-989-2190